

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1124 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

ABDUL ABDULKADAR KARBHARI

Appearance:

1. Criminal Appeal No. 1124 of 1986
MR AJ DESAI Ld. APP for Petitioner No. 1
MR PM THAKKAR for Respondent No. 1-6
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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

The appellant- State of Gujarat has, challenged in this appeal, the impugned judgment and order of acquittal dated 20.5.1986, passed by the ld. Addl. Sessions Judge, Himatnagar, in Sessions Case No. 17/1986, acquitting all the respondents-accused for the offences under sec. 147, 148,149,336,337,435 and 436 of IPC.

As per the prosecution case, on 1.7.1985, there were wide spread riots at Prantij. At about 7.00PM, some Muslims tried to dash with Hindu boy, who was on scooter and gave him push and also attacked on three other Hindus with pipes. PSI Mr. Desai, who was on duty at Bazar Chowk, received information that at Kumbharvas, there was an unlawful assembly. He went there with police force. There were about 50 persons collected in the mob. They were warned. In spite of warning given by the police, the mob of Muslims did not disperse and raised shouts "Maro", "Kapo". There upon, the police fired two shells, in spite of it, the mob did not disperse. Therefore, again firing was ordered. In the assault made by the mob of Muslims, one Vinubhai Mistry received injury and hedge was set at fire. When the firing was ordered, the members of the mob ran away from the place of incident. All the six respondents-accused arrested on the next day by the police and after completing the investigation, charge-sheet was filed against them for the aforesaid offences. They were tried by the ld. Addl. Sessions Judge. The entire prosecution case based upon the police officers, PSI Mr. Desai, Police Constable Ibrahim, Police Constable Rajubhai and Police Constable Daljibhai. After appreciating their evidence, the ld. Judge came to the conclusion that the prosecution failed to prove its case beyond the reasonable doubt, mainly on the ground that the incident in question took place in the night hours at about 8.30PM and, there was no light, therefore, it was not possible for the police witnesses to identify these accused persons. The ld. Judge was also of the opinion that there was a conflicting evidence of PSI Mr. Desai and other Police Constable. PSI Mr. Desai claimed to have identified only two accused i.e. accused no. 1 and 2, whereas the other witnesses have claimed to have identified the remaining accused, but admittedly, in this case, no test identification parade was held. In that view of the matter, the ld. Judge refused to place reliance on the evidence of the police witnesses. On these grounds and other grounds, the ld. Judge gave benefit of doubt to the respondents-accused and acquitted them for the charges levelled against them. This has

been challenged in this appeal by the appellant-State of Gujarat.

Ld. APP Mr. Desai vehemently submitted that the ld. judge committed grave error in acquitting the respondents-accused on the ground that it was dark night, therefore, it was not possible for the witnesses to identify the accused. He submitted that when the hedge was set at fire, then in the light of fire, the witnesses who were present there, could have easily identified the accused. It is true that if the accused persons were found nearby the place, then perhaps the witnesses may be in a position to identify them, but PSI Mr. Desai clearly stated in his evidence that he could identify the accused no. 1 and 2 running away in the mob at a distance of 50 meters, which is not possible. When a person is facing his back, then in a dark night in the light of firing, at a distance of more than 160 ft., it is not possible for any one to identify two accused persons more particularly when they were in the mob of 50 persons.

Apart from this, some witnesses tried to claim that they had identified the accused persons in the street light, whereas some witnesses clearly admitted that there was no street light at the place of incident. In that view of the matter, it would be extremely difficult to place reliance on their testimony.

The incident in question took place way back on 1.7.1985, wherein it is alleged that mob of Muslims attacked the house of another Muslim advocate Mr. Ghori only because, in his house, his Hindu servant was staying. Kodarsinh, servant of advocate Mr. Ghori has not supported the prosecution case, therefore, he was declared hostile. It is also the case of the prosecution that the mob of Muslims had attacked house of another Muslim gentleman Shabbirkhan. The scope of acquittal appeal is totally different. If two views are possible and view taken in favour of the accused is more probable, then merely because this court would taken different view in the matter, would not sufficient in acquittal appeal. The ld. Judge had an opportunity to mark the manner of the witnesses and having noted the demeanour and having appreciated the evidence, he has refused to place any reliance on their evidence, then certainly this court would not like to interfere with such an order of acquittal, and that too, after a period of more than two decades of the incident.

In view of the above discussion, this appeal fails and is hereby dismissed.

(B.J. SHETHNA, J.)

(J.R. VORA, J.)
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